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**Economic Development,  
Agriculture & Trade Committee**

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**HB 1099**

**Brief Description:** Managing water resources for the mainstem of the Columbia river.

**Sponsors:** Representatives Linville, McCoy, Quall, Pettigrew and Chase; by request of Governor Locke.

**Brief Summary of Bill**

- Establishes the Columbia River Mainstem Water Management Program (Program) to be managed by the Department of Ecology (Ecology).
- Requires Ecology to acquire water for the Program and specifies requirements regarding use of water acquired for mitigation and instream flows.
- Creates the Columbia River Mainstem Investment Account (Account) in the state treasury and specifies uses of Account funds.
- Requires Ecology to issue Program rules and to conduct monitoring and compliance.
- Requires Ecology to submit a biennial Program status report and to conduct a formal Program review every ten years.

**Hearing Date:** 2/11/05

**Staff:** Caroleen Dineen (786-7156).

**Background:**

State Water Law. Washington water law is based on the prior appropriation doctrine. The doctrine -- known as "first in time is first in right"-- creates a priority system based on the date of use or intent to use water. In times of water shortage, more senior water rights may be exercised to the fullest extent while use of water under more junior rights may be reduced or prohibited.

A water right has several elements that define the right or place limits on water use under the right. These elements include the water right's priority, quantity, time of the year water may be withdrawn, point of diversion, purpose of use, and place of use. State statutes include requirements for specifying each of these elements in a water right permit or certificate and

provide a process for changing certain elements of the water right, such as the place or purpose of use.

State and federal water rights exist in Washington. State-based permits and certificates are water rights based on the statutory permit system. Historic claims are rights to use water that predate permit requirements. Washington law also recognizes certain exempt uses (i.e., uses that do not require a permit or certificate) and instream flows as water rights. Federal water rights include rights held by the United States for the federal government and those rights held in trust for Indian tribes.

Washington adopted a water right permit system through enactment of a surface water code in 1917 and a ground water code in 1945. With certain exceptions, new rights to use surface or ground water or to establish reservoir and storage projects must be established according to the permit system. A person seeking a new water right files an application with the Department of Ecology (Ecology), which must consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate. According to Ecology, approximately 3,600 water rights permits and 48,000 water rights certificates have been issued in this state.

State water resources statutes have a number of functions in addition to establishment and exercise of state-based water rights. The water code prohibits the negligent waste or the unauthorized use of water. The water code also specifies a sequence of enforcement measures, starting with technical assistance and leading to penalties if needed to achieve compliance with water laws and rules.

Columbia River Initiative. Governor Locke proposed the Columbia River Initiative (CRI) as a water management program for the Columbia River. At Ecology's request the National Research Council of the National Academies submitted a report in March 2004 reviewing and evaluating the environmental parameters critical to survival and recovery of Columbia River fish species listed under the federal Endangered Species Act. As part of this study, the cumulative effects and risks of potential future Columbia River water withdrawals between 250,000 and 1.3 million acre feet per year were reviewed. Ecology also commissioned a University of Washington study, submitted in January 2004, on the economic effects of increased water diversions from the Columbia River.

As part of its CRI efforts, Ecology negotiated a memorandum of understanding with the United States Bureau of Reclamation and several irrigation districts in December 2004 and an agreement with the Confederated Tribes of the Colville Reservation in January 2005. Ecology also proposed a draft rule regarding the CRI in December 2004.

### **Summary of Bill:**

Program. The Columbia River Mainstem Water Management Program (Program) is established. The Program is to be administered by Ecology, which must adopt rules to implement the statutory requirements. The Program's two goals are to: (1) meet the water supply needs of growing

communities and local economies with a timely and affordable water supply that allows for new uses; and (2) manage water to protect and enhance the quality of the natural environment by securing and dedicating water for streamflow improvement in the Columbia River mainstem. The Program's objectives are to:

- improve reliability of water rights issued between 1980 and 2003 that are subject to minimum instream flows or other mitigation conditions to protect streamflows;
- improve streamflows during the primary period of fish outmigration on the Columbia River mainstem; and
- mitigate for the streamflow impacts of future water rights permits.

Mainstem Account. Ecology must acquire water for the Columbia River mainstem. Water may be acquired through conservation, water management changes, water storage projects, donations and purchases of existing water rights, and other means. Water also may be acquired from Canada and through other governmental agreements and contracts. Water acquired for the Program is to be deposited in the Columbia River Mainstem Account (Mainstem Account) under the state's trust water rights program.

Ecology must make water in the Mainstem Account available as mitigation to willing applicants and to improve streamflows on the Columbia River mainstem. Two-thirds of the water must be allocated as mitigation water for new uses. One-third of the Mainstem Account water must be permanently retained to improve streamflows. The amount of water in the Mainstem Account does not govern, cannot be used to regulate, and is not a determinative factor in Ecology's water management decisions for Columbia River tributaries.

Ecology must manage the Mainstem Account water in collaboration with the Washington Department of Fish and Wildlife (WDFW). WDFW must consult with tribal and federal natural resource managers on ways to maximize benefits to fish from this water.

Mitigation Process. Applicants for new water rights or parties seeking mitigation water for existing rights may either develop their own mitigation proposals or request water from the Mainstem Account. When an applicant develops his or her own mitigation proposal, Ecology must allocate from the Mainstem Account an amount equal to one-half of the mitigation water for streamflow benefit. Any new water uses that would reduce Columbia River streamflows below Chief Joseph Dam from April through August must be mitigated to avoid streamflow reductions during this period.

When mitigation is secured, Ecology must issue permits that could be exercised during drought periods in lieu of existing interruptible water rights. Ecology also must process pending and future water right applications for the Columbia River mainstem. All applications must be processed according to the statutory water code requirements. However, applications with mitigation secured to avoid April-August streamflow reductions below Chief Joseph Dam may be processed before previously filed applications for which mitigation is not secured.

Ecology may enter into agreements with applicants seeking water from the Mainstem Account if sufficient mitigation water is available. In exchange for mitigation water, Ecology must require and collect an annual payment based on the quantity of mitigation water specified in the agreement. New permits must be conditioned to require the annual payments. The annual payment rates are to be established by Ecology rule after consideration of acquisition cost

recovery and affordability of water supply. Costs of acquiring water for streamflow improvements must be borne by the public and not by water users.

Monitoring and Compliance. Ecology must establish a monitoring program to assess Program effectiveness, including conditions such as streamflow conditions and the number, type, and quantities of approved water uses. Ecology also must implement a compliance program (consistent with the compliance sequence in the water code) and appoint a water master(s) for the Columbia River mainstem to provide local technical assistance and conduct compliance activities.

Program Reports and Review. Ecology must submit a biennial Program status report to the appropriate legislative committees by December 31 of even-numbered years. The status report must include information on the Mainstem Account, monitoring efforts, compliance activities, streamflow conditions, and current and anticipated water supply conditions and needs. Every ten years Ecology must conduct a formal Program review, including independent evaluations of the economic and scientific information that provide the premises of the Program, and submit a report of the findings of the formal review. Ecology must notify the Governor and the Legislature through the biennial report on the timing and process for the formal review.

Investment Account. The Columbia River Mainstem Investment Account (Investment Account) is created in the state treasury. Receipts from mitigation agreements and legislative appropriations must be deposited into the Investment Account. Investment Account funds may be used only for specified purposes, which include:

- site evaluation, feasibility, environmental studies, design and engineering, and storage facility construction;
- activities and investments to acquire water from conservation projects;
- infrastructure evaluation, feasibility, environmental evaluation, design and engineering, and construction to expand capacity of existing storage facilities;
- installation and monitoring streamflow and water measurement devices;
- Program management and compliance activities;
- water acquisition through agreements with other governments or federal agencies;
- water acquisition from willing sellers; and
- bond issuance, sales, and debt service.

Funds in the Investment Account may be spent only after appropriation.

Findings and Intent. Legislative findings identify the Columbia River's economic, cultural, and natural resource importance and the significance of Columbia River water for various uses. Legislative recognition of the need for state action and investment to secure the economic and natural resource benefits associated with Columbia River water is stated. Legislative intent is specified to establish a new state water resource management program for the Columbia River mainstem to meet water supply needs in a manner protecting and enhancing the quality of the natural environment.

Miscellaneous Provisions. Program statutes are codified as a new chapter in Title 90 RCW. Definitions are included in the new chapter, and an interpretation provision specifies the Program statutes may not be interpreted or implemented in a manner that impairs or diminishes a valid federal or state water right.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Sections 9 and 10 (state treasury statutes) take effect July 1, 2005, and July 1, 2006, respectively. The bill contains an emergency clause for the other provisions to take effect immediately.